

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 6447 OF 1996

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SAIYED MUSTAKALI MURTUJA ALI
VERSUS
THE STATE OF GUJARAT

Appearance:

MR JS YADAV for the Petitioner

MR SP HASURKAR for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Order : 20/10/2000

C A V JUDGMENT

#. The petitioner, who was working as Hamal in the

office of the D.S.P., Himatnagar, Sabar Kantha challenges by this petition the order dated 22.4.95 of the respondent No.3 under which his services were terminated.

#. The facts of the case are that after interview the petitioner was appointed as Hamal on part time for 4 hrs. on the consolidated salary of Rs.400/- under the order dated 30.7.91 and on the same day he joined services. The petitioner possesses the qualification of S.S.C. and made a representation to the respondent No.3 to give him appointment on the post of Class IV either by way of appointment or promotion. That request was not accepted by the respondent. It is the case of the petitioner that on 1.1.95 he was asked not to put signature on the muster roll. He was not paid salary from 1.2.1995 to 5.4.1995. He was asked by the respondent not to come to office from 5.4.1995. A notice was given on 6.4.95 to the petitioner to show cause as to why his services should not be terminated and then the order impugned in this Special Civil Application has been passed.

#. The learned counsel for the petitioner contended that the termination of services of the petitioner is contrary to Rule 33 of the Bombay Civil Services Rules. In his submission the work was available in the office of the respondent No.3, which is clearly borne out from the fact that after termination of the services of the petitioner another person has been appointed in his place. So, the termination of services of the petitioner is arbitrary and unjustified. It has next been contended that it is an order suffers from ulterior motive, bias and mala fide at the end of the respondent No.3 as the petitioner was demanding appointment/promotion as class IV employee. Lastly it is contended that this order has been passed without holding any inquiry or without giving him an opportunity of hearing.

#. Mr.Hasurkar in contra contended that it is a case of the part time employee to which the provisions of Section 33 of Bombay Civil Services Rules, 1959 does not apply. It has next been contended that the petitioner is in the habit of remaining absent without permission and/or intimation. He was absent from duty from 1.2.2000. It is not the case where the opportunity of hearing was not given to the petitioner.

#. The learned counsel for the petitioner on being put by the court admitted that the petitioner has not filed any reply to the notice dated 6.4.1995 Annexure-F at page No.28. From this notice, it is clear that before terminating the services of the petitioner he has been

given an opportunity of hearing but it is different matter that the petitioner himself has not availed thereof. The contention made by the learned counsel for the petitioner that the order is passed without notice or opportunity of hearing is unjustified and cannot be accepted. In this case in facts thereof it is difficult to accept that principles of natural justice are not followed by the respondents. The petitioner was afforded with adequate and sufficient opportunity to give out his defence but he himself has not utilised the same. Blame which has been made to the respondents in these proceedings is wholly unjustified.

#. The petitioner was a part time employee. He was appointed on the consolidated salary of Rs.400/- p.m. and to work for 4 hours. It is to be mentioned that this appointment was only a temporary appointment and it can be terminated even without notice. The petitioner has failed to furnish any explanation good, bad or different for his absence from the duty without any intimation or permission. In case the petitioner has any explanation for this his absence from duty he could have furnished the same by giving reply to the show cause notice. The very fact that the petitioner has not filed reply to the show cause notice goes to show that he has no explanation whatsoever for his absence from the duty. Whatever the explanation furnished in para No.8 of the Special Civil Application, it is difficult to accept it. It is nothing but appears to be concocted one. Moreover, if we go by the affidavit of the petitioner, the averments made in para 8 are stated to be true to the best of his information and belief. On such verification also it is difficult to believe what to say to accept the averments made in para No.8 of the petition to be true and correct. Earlier also the petitioner remained absent for the period from 4.6.93 to 15.6.93, 3.9.93 to 10.9.93 and on 23.9.93 but the respondent have acted very fairly, reasonably and they have not taken any serious action against the petitioner. Where a part time employee remained absent without any intimation it is a serious matter and his services could have been brought to an end without giving any notice and opportunity of hearing but the respondents have acted very fairly and reasonably and opportunity of hearing has been given to the petitioner. It is a different matter that he could not furnish any explanation and result which has been there in the matter was inevitable. It is not the case where any notice is required to be given under Rule 33 of the Bombay Civil Services rules to the petitioner.

In the result, this Special Civil Application

fails and the same is dismissed. Rule is discharged.
Interim relief, if any granted stands vacated. No order
as to costs.

(S.K.Keshote, J.)

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